

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 190

FINAL READING

Introduced by Avery, 28; Giese, 17; Karpisek, 32; Pirsch, 4.

Read first time January 12, 2009

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the DNA Identification Information Act;
2 to amend sections 29-2262, 29-4101, 29-4102, 29-4103,
3 and 29-4106, Reissue Revised Statutes of Nebraska,
4 and section 59-1608.04, Revised Statutes Cumulative
5 Supplement, 2008, as amended by section 34, Legislative
6 Bill 3, One Hundred First Legislature, First Special
7 Session, 2009; to change and eliminate definitions;
8 to provide for the collection of DNA samples from
9 individuals convicted of felony offenses and individuals
10 released on probation; to require such individuals
11 to pay the costs of such collection; to provide for
12 applicability; to create a fund; to provide for transfers
13 from the State Settlement Cash Fund; to harmonize

1 provisions; and to repeal the original sections.

2 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 29-2262, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 29-2262 (1) When a court sentences an offender to
4 probation, it shall attach such reasonable conditions as it deems
5 necessary or likely to insure that the offender will lead a
6 law-abiding life. No offender shall be sentenced to probation if
7 he or she is deemed to be a habitual criminal pursuant to section
8 29-2221.

9 (2) The court may, as a condition of a sentence of
10 probation, require the offender:

11 (a) To refrain from unlawful conduct;

12 (b) To be confined periodically in the county jail or to
13 return to custody after specified hours but not to exceed (i) for
14 misdemeanors, the lesser of ninety days or the maximum jail term
15 provided by law for the offense and (ii) for felonies, one hundred
16 eighty days;

17 (c) To meet his or her family responsibilities;

18 (d) To devote himself or herself to a specific employment
19 or occupation;

20 (e) To undergo medical or psychiatric treatment and to
21 enter and remain in a specified institution for such purpose;

22 (f) To pursue a prescribed secular course of study or
23 vocational training;

24 (g) To attend or reside in a facility established for the
25 instruction, recreation, or residence of persons on probation;

1 (h) To refrain from frequenting unlawful or disreputable
2 places or consorting with disreputable persons;

3 (i) To possess no firearm or other dangerous weapon if
4 convicted of a felony, or if convicted of any other offense, to
5 possess no firearm or other dangerous weapon unless granted written
6 permission by the court;

7 (j) To remain within the jurisdiction of the court and
8 to notify the court or the probation officer of any change in his
9 or her address or his or her employment and to agree to waive
10 extradition if found in another jurisdiction;

11 (k) To report as directed to the court or a probation
12 officer and to permit the officer to visit his or her home;

13 (l) To pay a fine in one or more payments as ordered;

14 (m) To pay for tests to determine the presence of drugs
15 or alcohol, psychological evaluations, offender assessment screens,
16 and rehabilitative services required in the identification,
17 evaluation, and treatment of offenders if such offender has the
18 financial ability to pay for such services;

19 (n) To perform community service as outlined in sections
20 29-2277 to 29-2279 under the direction of his or her probation
21 officer;

22 (o) To be monitored by an electronic surveillance device
23 or system and to pay the cost of such device or system if the
24 offender has the financial ability;

25 (p) To participate in a community correctional facility

1 or program as provided in the Community Corrections Act;

2 (q) To successfully complete an incarceration work camp
3 program as determined by the Department of Correctional Services;

4 (r) To satisfy any other conditions reasonably related to
5 the rehabilitation of the offender;

6 (s) To make restitution as described in sections 29-2280
7 and 29-2281; or

8 (t) To pay for all costs imposed by the court, including
9 court costs and the fees imposed pursuant to section 29-2262.06.

10 (3) In all cases in which the offender is guilty
11 of violating section 28-416, a condition of probation shall be
12 mandatory treatment and counseling as provided by such section.

13 (4) In all cases in which the offender is guilty of
14 a crime covered by the DNA Identification Information Act, a
15 condition of probation shall be the collecting of a DNA sample
16 pursuant to the act and the paying of all costs associated with the
17 collection of the DNA sample prior to release ~~on~~ from probation.

18 Sec. 2. Section 29-4101, Reissue Revised Statutes of
19 Nebraska, is amended to read:

20 29-4101 Sections 29-4101 to 29-4115 and section 6 of this
21 act shall be known and may be cited as the DNA Identification
22 Information Act.

23 Sec. 3. Section 29-4102, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 29-4102 The Legislature finds that DNA data banks are

1 an important tool in criminal investigations, in the exclusion
2 of individuals who are the subject of criminal investigations or
3 prosecutions, in deterring and detecting recidivist acts, and in
4 locating and identifying missing persons and human remains. Several
5 states have enacted laws requiring persons convicted of certain
6 crimes, especially ~~sex offenses~~, to provide genetic samples for DNA
7 typing tests. Moreover, it is the policy of this state to assist
8 federal, state, and local criminal justice and law enforcement
9 agencies in the identification and detection of individuals in
10 criminal investigations and in locating and identifying missing
11 persons and human remains. It is in the best interest of this
12 state to establish a State DNA Data Base for DNA records and
13 a State DNA Sample Bank as a repository for DNA samples from
14 individuals convicted of felony ~~sex~~ offenses and other specified
15 offenses and from individuals for purposes of assisting in locating
16 and identifying missing persons and human remains.

17 Sec. 4. Section 29-4103, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 29-4103 For purposes of the DNA Identification
20 Information Act:

21 (1) Combined DNA Index System means the Federal Bureau
22 of Investigation's national DNA identification index system that
23 allows the storage and exchange of DNA records submitted by state
24 and local forensic DNA laboratories;

25 (2) DNA means deoxyribonucleic acid which is located in

1 the cells and provides an individual's personal genetic blueprint.
2 DNA encodes genetic information that is the basis of human heredity
3 and forensic identification;

4 (3) DNA record means the DNA identification information
5 stored in the State DNA Data Base or the Combined DNA Index System
6 which is derived from DNA typing test results;

7 (4) DNA sample means a blood, tissue, or bodily fluid
8 sample provided by any person covered by the DNA Identification
9 Information Act for analysis or storage, or both;

10 (5) DNA typing tests means the laboratory procedures
11 which evaluate the characteristics of a DNA sample which are of
12 value in establishing the identity of an individual;

13 ~~(6) Felony sex offense means a felony offense, or an~~
14 ~~attempt, conspiracy, or solicitation to commit a felony offense,~~
15 ~~under any of the following:~~

16 ~~(a) Kidnapping of a minor pursuant to section 28-313,~~
17 ~~except when the person is the parent of the minor and was not~~
18 ~~convicted of any other offense in this subdivision;~~

19 ~~(b) Incest of a minor pursuant to section 28-703;~~

20 ~~(c) Sexual assault in the first or second degree pursuant~~
21 ~~to section 28-319 or 28-320;~~

22 ~~(d) Sexual assault of a child in the second or third~~
23 ~~degree pursuant to section 28-320.01;~~

24 ~~(e) Sexual assault of a child in the first degree~~
25 ~~pursuant to section 28-319.01;~~

1 ~~(f) Sexual assault of a vulnerable adult pursuant to~~
2 ~~subdivision (1)(c) of section 28-386, and~~

3 ~~(g) False imprisonment of a minor in the first degree~~
4 ~~pursuant to section 28-314, except when the person is the parent~~
5 ~~of the minor and was not convicted of any other offense in this~~
6 ~~subdivision;~~

7 ~~(7) (6) Law enforcement agency includes a police~~
8 ~~department, a town marshal, a county sheriff, and the Nebraska~~
9 ~~State Patrol;~~

10 ~~(8) (7) Other specified offense means an offense,~~
11 ~~misdemeanor stalking pursuant to sections 28-311.02 to 28-311.05 or~~
12 ~~false imprisonment in the second degree pursuant to section 28-315~~
13 ~~or an attempt, conspiracy, or solicitation to commit an offense,~~
14 ~~under any of the following: stalking pursuant to sections 28-311.02~~
15 ~~to 28-311.05, false imprisonment in the first degree pursuant to~~
16 ~~section 28-314, false imprisonment in the second degree pursuant~~
17 ~~to section 28-315, knowing and intentional sexual abuse of a~~
18 ~~vulnerable adult pursuant to subdivision (1)(c) of section 28-386,~~
19 ~~or a violation of the Sex Offender Registration Act pursuant to~~
20 ~~section 29-4011; and~~

21 ~~(a) Murder in the first degree pursuant to section~~
22 ~~28-303;~~

23 ~~(b) Murder in the second degree pursuant to section~~
24 ~~28-304;~~

25 ~~(c) Manslaughter pursuant to section 28-305;~~

1 ~~(d) Stalking pursuant to sections 28-311.02 to 28-311.05,~~

2 ~~(e) Burglary pursuant to section 28-507 provided that the~~

3 ~~real estate is a dwelling place intended for human occupancy, or~~

4 ~~(f) Robbery pursuant to section 28-324, and~~

5 ~~(9)~~ (8) Released means any release, parole, furlough,

6 work release, prerelease, or release in any other manner from a

7 prison, a jail, or any other detention facility or institution.

8 Sec. 5. Section 29-4106, Reissue Revised Statutes of

9 Nebraska, is amended to read:

10 29-4106 (1) A person who is convicted of a felony ~~sex~~

11 offense or other specified offense on or after ~~July 14, 2006,~~

12 the effective date of this act, who does not have a DNA sample

13 available for use in the State DNA Sample Bank, shall, at his or

14 her own expense, have a DNA sample collected:

15 (a) Upon intake to a prison, jail, or other detention

16 facility or institution to which such person is sentenced. If the

17 person is already confined at the time of sentencing, the person

18 shall have a DNA sample collected immediately after the sentencing.

19 Such DNA samples shall be collected at the place of incarceration

20 or confinement. Such person shall not be released unless and until

21 a DNA sample has been collected; or

22 (b) As a condition for any sentence which will not

23 involve an intake into a prison, jail, or other detention facility

24 or institution. Such DNA samples shall be collected at a detention

25 facility or institution as specified by the court. Such person

1 shall not be released unless and until a DNA sample has been
2 collected.

3 (2) A person who has been convicted of a felony ~~sex~~
4 offense or other specified offense before ~~July 14, 2006,~~ the
5 effective date of this act, who does not have a DNA sample
6 available for use in the State DNA Sample Bank, and who is still
7 serving a term of confinement or probation for such felony offense
8 or other specified offense on ~~July 14, 2006,~~ the effective date of
9 this act, shall not be released prior to the expiration of his or
10 her maximum term of confinement or revocation or discharge from his
11 or her probation unless and until a DNA sample has been collected.

12 (3) A person who is serving a term of probation and has a
13 DNA sample collected pursuant to this section shall pay all costs
14 associated with the collection of the DNA sample.

15 Sec. 6. The State DNA Sample and Data Base Fund is
16 created. The fund shall be maintained by the Department of Justice
17 and administered by the Attorney General. The fund shall consist
18 of any funds transferred to the fund by the Legislature or
19 made available by any department or agency of the United States
20 Government if so directed by such department or agency. The fund
21 shall be used to pay the expenses of the Department of Correctional
22 Services and the Nebraska State Patrol as needed to collect DNA
23 samples as provided in section 29-4106. Any money in the fund
24 available for investment shall be invested by the state investment
25 officer pursuant to the Nebraska Capital Expansion Act and the

1 Nebraska State Funds Investment Act.

2 Sec. 7. Section 59-1608.04, Revised Statutes Cumulative
3 Supplement, 2008, as amended by section 34, Legislative Bill 3, One
4 Hundred First Legislature, First Special Session, 2009, is amended
5 to read:

6 59-1608.04 The State Settlement Cash Fund is created.
7 The fund shall be maintained by the Department of Justice and
8 administered by the Attorney General. Except as otherwise provided
9 by law, the fund shall consist of all recoveries received pursuant
10 to the Consumer Protection Act, including any money, funds,
11 securities, or other things of value in the nature of civil
12 damages or other payment, except criminal penalties, whether such
13 recovery is by way of verdict, judgment, compromise, or settlement
14 in or out of court, or other final disposition of any case or
15 controversy, or any other payments received on behalf of the state
16 by the Department of Justice and administered by the Attorney
17 General for the benefit of the state or the general welfare of its
18 citizens, but excluding all funds held in a trust capacity where
19 specific benefits accrue to specific individuals, organizations, or
20 governments. All money in the fund shall be subject to legislative
21 review and shall be appropriated and expended for any allowable
22 legal purposes as determined by the Legislature. The fund shall
23 only be appropriated to a separate and distinct budget program
24 and such appropriations shall only be expended from a separate
25 and distinct budget subprogram and shall not be commingled with

1 any other revenue or expenditure. Transfers may be made from the
2 fund to the General Fund and the State DNA Sample and Data Base
3 Fund at the direction of the Legislature. To provide necessary
4 financial accountability and management oversight, revenue from
5 individual settlement agreements or other separate sources credited
6 to the State Settlement Cash Fund may be tracked and accounted
7 for within the state accounting system through the use of separate
8 and distinct funds, subfunds, or any other available accounting
9 mechanism specifically approved by the Accounting Administrator for
10 use by the Department of Justice. Any money in the fund available
11 for investment shall be invested by the state investment officer
12 pursuant to the Nebraska Capital Expansion Act and the Nebraska
13 State Funds Investment Act.

14 Sec. 8. Original sections 29-2262, 29-4101, 29-4102,
15 29-4103, and 29-4106, Reissue Revised Statutes of Nebraska, and
16 section 59-1608.04, Revised Statutes Cumulative Supplement, 2008,
17 as amended by section 34, Legislative Bill 3, One Hundred First
18 Legislature, First Special Session, 2009, are repealed.